

September 17, 2013

VIA ELECTRONIC MAIL

Thomas C. Nash. Esq.  
Associate Regional Counsel  
EPA - Region 5  
Enforcement Services Section 1  
(Mail Code: SE-5J)  
77 West Jackson Boulevard  
Chicago, IL 60604-3590

**Re: West Vermont Drinking Water Contamination Site, Speedway, Marion County, Indiana -- Request for a Meeting and an Extension of Time to Respond to Draft Administrative Settlement Agreement and Order on Consent**

Dear Mr. Nash:

I am writing to follow up on our telephone conversation on Friday, September 13, 2013, during which we discussed an extension of time to respond to the United States Environmental Protection Agency (EPA) Region 5's letter dated August 28, 2013 which enclosed a draft Administrative Settlement Agreement and Order of Consent (ASAOC) for the West Vermont Drinking Water Contamination (WVDWC) site. As you know, EPA's letter (which was delivered to AMMH's registered agent on September 9) gives AIMCO Michigan Meadow Holdings, LLC (AMMH) and affiliated entities fourteen (14) days from the date of the receipt of the letter to execute the draft ASAOC and notify EPA that they will agree to undertake the proposed removal action for the site and reimburse EPA for its future response costs. During our conversation, I also asked you for the opportunity to present AMMH's concerns about the ASAOC to Agency management.

At the conclusion of our conversation on Friday, you requested that I submit my requests to you in writing. This letter complies with that request.

**BACKGROUND**

In response to my request for an extension of time, you stated that EPA could perceive AMMH's request as one designed to delay the proposed removal action. Rest assured that this is not the case, as AMMH's voluntary cleanup of the Michigan Plaza/Michigan Apartments Site and our recent history of communications regarding the WVDWC Site across Holt Road demonstrates.

As you know, AMMH has been working with the Indiana Department of Environmental Management (IDEM) to remediate the Michigan Plaza/Michigan Apartments Site since 2001, and has been enrolled in IDEM's Voluntary Remediation Program since 2007. In the last 18 months alone, AMMH has undertaken two separate investigations to address questions raised by IDEM, and in July 2013, following approval from IDEM and under IDEM oversight, AMMH conducted a third round of

bioremediation at the Michigan Plaza/Michigan Apartments Site to address residual chlorinated solvent contamination. In addition, AMMH continues to conduct quarterly monitoring at the Michigan Plaza/Michigan Apartments site, and will soon be submitting a revised Remediation Work Plan that addresses IDEM's requirements. Since 2001, my client has incurred millions of dollars in voluntarily remediating drycleaner contamination at these former properties – hardly the actions of a non-responsive entity.

In response to EPA's allegations that the Michigan Plaza/Michigan Apartments Site or the remediation thereof had caused contamination at the WVDWC Site, AMMH undertook additional investigation activities between August and December 2011, and shared those results with EPA, and of course continues to share with EPA all of the work it has performed at IDEM's request. In response to EPA's information request last summer, we submitted hundreds of pages of information to EPA in September 2012. We also engaged Robert Minning, a professional geologist with 40 years of experience, to work with AMMH's existing consultant to evaluate EPA's allegations and advise as to whether there was any merit to them. Following our receipt and review of Weston's second Technical Memorandum, dated January 30, 2013, we met with you and Shelly Lam in Chicago and presented the basis for our consultants' conclusion that Michigan Plaza/Michigan Apartments was not a source of contamination at the WVDWC Site. The next day, on March 21, 2013, I sent you an electronic message confirming our discussions regarding the timeline for a further exchange of information.

Under that timeline, AMMH agreed to submit a formal Technical Response to EPA by April 19, and EPA agreed to provide AMMH with three critical pieces of information as soon as it was able: (a) citations to the case law on which you were relying for holding a voluntary cleanup party liable for allegedly contaminating an adjacent property; (b) soil gas data that EPA collected in January 2013, which allegedly shows PCE in soils at the WVDWC Site and (c) a written response to AMMH's Technical Response. We also agreed that, following receipt of these materials, AMMH would have some reasonable period of time to respond to the July 2012 General Notice letter – we proposed thirty (30) days but never received a reply. AMMH submitted its Technical Response as planned on April 19. We received item (a) on May 2, and a portion of item (c) on July 18, but it referenced a number of calculations that were not included. We requested the missing calculations on July 25 and received them by electronic mail on September 3, about an hour before we received a courtesy copy of the ASAOC from you by electronic mail. After I contacted you and reminded you of our discussions back in March, we received the missing soil gas data on September 4 and 6.

The above history demonstrates that AMMH has been aggressively managing the cleanup of the Michigan Plaza/Michigan Apartments Site and actively working to resolve the dispute with EPA in accordance with the schedule we discussed.

### **OUR REQUESTS**

It is against this backdrop that I made two requests to you on Friday on behalf of AMMH. First, on behalf of AMMH, I requested an extension of 3 weeks (from September 23 until October 14) to consider EPA's proposed order. That time is necessary because AMMH is still in the process of completing its review of the information received on September 3, 4 and 6. Based on our review to date, we have serious technical issues about EPA's approach, which serves as a basis for the draft ASAOC. I expect that we will be submitting a response to EPA's analysis in the near future and AMMH wants to be certain that EPA has enough time to review our analysis and discuss the analysis with us. In addition, the extension of time will also afford us a sufficient amount of time to consider the terms of the proposed order.

Second, on behalf of AMMH, I requested an opportunity to meet with EPA Region V management (I specifically mentioned Robert Kaplan) to present our concerns regarding the proposed order. We would welcome a discussion with other decision-makers. Because our goal is to resolve this matter rather than to prolong it, I proposed that the meeting occur no later than October 14 and stated a strong preference that the meeting occur sooner rather than later. While I recognize that there may have already been internal discussions with management regarding the draft ASAOC, we would like the opportunity to present the significant technical issues that I make reference to above and raise what we believe to be important legal and policy issues associated with seeking to hold AMMH liable for contamination allegedly arising from the conduct of a voluntary cleanup of a third party's contamination under a state voluntary cleanup program.

We look forward to your prompt response so that we can make arrangements for the requested meeting.

Sincerely,



Scott H. Reisch

cc: Shelly Lam, EPA  
Adam M. Kushner, Hogan Lovells